IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10408 OF 2004

Mr. Purushottam alias Nana U. Sanyasi ... Petitioner

V/s

Mr. A.N. Jog & ors. ... Respondents

Mr. R. S. Khadapkar for the petitioner.

Mr. S.N. Chandrachood for the respondent Nos. 1 to 4.

CORAM: P.V. KAKADE, J.

DATED: 5TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. Rule. Rule made returnable forthwith.

3. This petition has impugned the order dated 26.2.2004 allowing the amendment which was passed by the lower appellate Court below Exh.8-B in Civil Application No. 689 of 2003.

4. Today, it is brought to my notice that the present

impugned order was passed consequent upon the amendment in the written statement which was allowed by the lower appellate Court. However, the Writ Petition No. 5832 of 2004 came to be filed against the order allowing the amendment of the written statement and this Court by order dated 20.9.2004 set aside the order of amendment of the written statement and amendment application filed by the respondent being Exh.8-A in Civil Application No. 689 of 2003 came to be dismissed.

5. In view of this position, the consequent step sought for by the production of document due to allowing the amendment of the written statement, the lower appellate Court has to go as the application for amendment of the written statement is dismissed. Under the circumstances, the petition has to be allowed by setting aside the order dated 26.2.2004.

6. The learned counsel for the respondent urged that even otherwise the document which was sought to be brought on record was very much relevant and went to the root of the matter, however, it is obvious that the respondent did not feel it necessary to bring the said document on record at the earlier stage and only wanted to bring it on record to answer the amendment made in

the written statement and, therefore, since the earlier amendment application is set aside, the consequential order dated 26.2.2004 also has to be quashed and set aside.

7. In the result, the Rule is made absolute. The petition is allowed in terms of prayer clause (b) and stands disposed of with no order as to costs.

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